IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY THIRD DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

-

WRIT PETITION Nos. 16221 of 2004, 17476 of 2004 &

Contempt Case No. 1595 of 2004

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1) WRIT PETITION NO : 16221 of 2004

Between:

T. Koteswara Rao, S/o T. Ramaiah, Secretary,
Kammavaripalem PACS, R/o Kammavaripalem Village
and Post, Chilakaluripet Mandal, Guntur District.

..... PETITIONER

AND

1 The Branch Manager/Person-in-Charge, Kammavaripalem PACS, Kammavaripalem Village and Post, Guntur District.
2 The General Manager, District Co-operative Central Bank Limited, Brodipet, Guntur.
3 The District Co-operative Officer, Guntur District, Guntur.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus, or any other appropriate writ, order or direction, declaring the proceedings issued by the 1st respondent in E.No. 1/2004-2005 dt. 19-6-2004 as illegal, arbitrary, unconstitutional and contrary to judgment of this Hon'ble Court reported in 2004 (2) A.L.D. Page No. 273.

Counsel for the Petitioner: MR.P.GOVIND REDDY

Counsel for the Respondents 1 & 2 : Sri Posani Venkateswarlu.

Counsel for the Respondent No.3: GP FOR COOPERATION

2) WRIT PETITION NO : 17476 of 2004

Between:

T. Koteswara Rao, S/o. T. Ramaiah, Secretary,
Kammavaripalem PACS, R/o. Kammavaripalem Village and
Post, Chilakaluripet Mandal, Guntur District.

..... PETITIONER

AND

1 The Branch Manager/ Person-In-Charge, Kammavaripalem PACS, Chilakalurpet, Guntur District.
2 The General Manager, District Co-operative Central Bank Limited, Brodipet, Guntur.
3 The Divisional Co-operative Officer, Narasaraopet, Guntur District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus, or any other appropriate writ, order or direction, declaring the proceedings issued by the 1st respondent dt. 30-7-2004 as illegal, arbitrary, unconstitutional and contrary to judgment of this Hon'ble Court reported in 2004 (2) A.L.D. Page No. 273 and consequently direct the respondents to reinstate the petitioner into service.

Counsel for the Petitioner: MR.P.GOVIND REDDY

Counsel for the Respondents 1 & 2 : Sri Posani Venkateswarlu.

Counsel for the Respondent No.3: GP FOR COOPERATION

3) CONTEMPT CASE NO : 1595 of 2004

(Contempt Case U/s. 10 to 12 of Contempt of Courts Act to punish the Respondents herein for violating, disobeying the Order of the High Court dated 29.09.2004 in WPMP No. 21907 of 2004 WP No. 17476 of 2004.

Between:

T. Koteswara Rao, S/o T. Ramaiah,
Kammavaripalem PACS, R/o Kammavaripalem (V) & Post,
Chilakaluripet (M), Guntur Dist.

..... PETITIONER

AND

A. Appa Rao, Branch Manager/person-in-charge,

Kammavaripalem PACS, Chilakalurpet,
Guntur Dist.

(other respondents are not necessary)

.....RESPONDENT

Counsel for the Petitioner: MR.P.GOVIND REDDY

Counsel for the Respondent: MR.VENKATESWARLU POSANI

The Court made the following :

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION Nos. 16221 of 2004, 17476 of 2004
& C.C. No.1595 of 2004

COMMON ORDER:

Heard Sri P.Govinda Reddy, the learned counsel appearing for the petitioner in all these matters and Sri Posani Venkateswarlu, the learned counsel appearing for the contesting respondents and the learned Government Pleader for Co-operation appearing for the third respondent.

The petitioner herein, who has been working as Paid Secretary, filed the Writ Petition No.16221 of 2004, *inter alia*, seeking to assail the impugned orders dated 19.06.2004 whereunder the respondent-society sought to recover the amount on the ground of excess drawal. Pending the Writ Petition, this Court granted interim stay of recovery as per the order in W.P.M.P. No. 21169 of 2004, dated 10.09.2004.

The main ground urged on behalf of the petitioner is to the effect that as per the principles laid down by this Court in *Government of Andhra Pradesh v. A.P. State Co-operative Societies Secretaries and Employees Union & others*, no salary has been fixed by the society as contemplated under Section 116-C of the A.P. Co-operative Societies Act, 1964, and therefore, the question of recovery on the ground of excess drawal does not arise. However, subsequent to filing of the aforesaid Writ Petition, the petitioner was placed under suspension in view of the fact that the petitioner did not pay the amount as per the aforesaid order dated 19.06.2004.

The petitioner filed another Writ Petition No. 17476 of 2004 and this Court granted interim suspension of the said orders as per the order dated 29.09.2004 in W.P.M.P. No. 22907 of 2004. Since the said latter interim order was not complied with, he filed Contempt Case No. 1595 of 2004.

All the matters are heard together, especially on the principal objection as to the very maintainability of the earlier proceedings under Article 226 of the Constitution of India having regard to the principles laid down by Full Bench of this Court in *Sum. Prasad v. Andhra Pradesh State Federation of Cooperative Spinning Mills Ltd., Hyderabad & others*.

After considering the submissions made and on perusal of the material, having regard to the principles laid down, the society can not be said to fall well within the expression ‘State’ as contemplated under Article 12 of Constitution of India. In view of the aforesaid principles, it is to be held that these Writ Petitions are not maintainable and liable to be dismissed.

However, having regard to the substantial questions involved, it is felt more apt in the interest of justice to permit the petitioner to file a

comprehensive representation to the society pointing out all the aforesaid objections as sought to be raised in these two Writ Petitions including as to the principles laid down by the aforesaid Full Bench of this Court and the mandate as contemplated under Section 116-C of the Co-operative Societies Act, within a period of six weeks from today and on receipt thereof, the fourth respondent shall consider the same and pass orders on merits in accordance with law, if necessary, after giving notice and opportunity to the petitioner within a period of six weeks from the date of receipt of the representation. It is needless to mention that till disposal of the said representation, the respondents shall not give effect to the orders of suspension and the petitioner shall not insist upon the same scales as is being drawn now and his entitlement in regard to scales of pay is always subject to the final orders on the representation. It is also needless to mention that the respondents shall not insist upon any recovery of the amounts as sought to be demanded.

The Writ Petitions are, accordingly, dismissed. No costs. Having regard to the dismissal of the Writ Petitions, no contempt arises and the contempt case is closed.

(B.Prakash Rao, J.)

23.03.2005

DRK

DEPUTY REGISTRAR.

Copy to:

1 Sri A.Appa Rao, the Branch Manager/Person-in-Charge, Kammavaripalem PACS, Kammavaripalem Village and Post, Guntur District.

2 The General Manager, District Co-operative Central Bank Limited, Brodipet, Guntur.

3 The District Co-operative Officer, Guntur District, Guntur.

4 Two CCs to the G.P. for Co-operation, High Court of A.P., High Court buildings, Hyderabad (o.u.t.).

5 Two CD copies.